

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.488 of 2021

In

Civil Writ Jurisdiction Case No.11458 of 2019

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1. Managing Director, the Bihar State Food and Civil Supply Corporation Ltd., Patna.
2. The District Manager, State Food Corporation, Rohtas Sasaram.

... ... Appellant/s

Versus

1. Dhannu Prasad Singh son of Late Yugal Rai resident at Susila Niwas, Baldev Bhawan Road, Near Aanchal Kirana Store, Mohalla Mohanpur Punaichak, P.S. Shashtrinagar, District Patna.
2. The State of Bihar through Principal Secretary, Food and Consumer Protection Department, Government of Bihar, Patna.
3. The Accountant General, Veerchand Patel Path, Patna.

... ... Respondent/s

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Constitution of India, 1950—Article 226—delay and laches—misappropriation of amount by 1st respondent while working as Assistant Godown Manager in Corporation—disciplinary proceeding as well as criminal proceeding started against the 1st respondent—an order of dismissal was passed by disciplinary authority on 4.12.2008; and in a criminal proceeding he was acquitted on 6.5.2019—1st respondent challenged his order of dismissal in the year 2021—learned Single Judge has not explained delay and laches for more than a decade in respect of challenging of order of dismissal dated 4.12.2008 in 2021—learned Single Judge has committed error in allowing writ in year 2021—order of learned Single Judge set aside—appeal allowed.

(Paras 8 to 10)

AIR 2016 SC 3006—**Relied upon.**

(2008) 8 SCC 648—**Disapproved.**

AIR 1964 SC 364—**Referred to.**

CWJC No. 11458 of 2019—**Dissented with.**

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... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Anjani Kumar, Sr. Advocate Mr. Shailendra Kumar Singh, Advocate
For the Private Respondent/s	:	Mr. D.K. Sinha, Sr. Advocate Mr. Alok Kumar Sinha No. 3, Advocate Mr. Alexander Ashok, Advocate
For the Accountant General	:	Mrs. Ritika Rani, Advocate
For the State	:	Mr. S. Raza Ahmad, AAG-5 Md. Kamil Akhtar, AC to AAG-5

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 16-01-2024

In the present Letters Patent Appeal, the appellants-Corporation have assailed the order of the learned Single Judge dated 12.07.2021 passed in CWJC No. 11458 of 2019.

2. Brief facts of the case are that 1st respondent-Dhannu Prasad Singh while working as Assistant Godown Manager in Bihar State and Civil Supplies Corporation. He is alleged to have



misappropriated a sum of Rs. 22,75,157.69/-. On these allegations, appellant proceeded to initiate parallel proceedings like departmental inquiry and criminal proceedings. Initially, he was placed under suspension on 28.07.2004 and, thereafter, charge-memo was issued on 23.11.2004 and further supplementary charge-memo was issued on 29.01.2005. The 1st respondent- Dhannu Prasad Singh filed his reply to the charge-memo in denying the alleged allegations and it was not satisfied by the disciplinary authority, he proceeded to appoint Inquiring Officer and Presenting Officer to hold departmental inquiry and it was concluded in proving the alleged charges levelled against the respondent-Dhannu Prasad Singh. To that extent inquiring officer submitted his inquiry report on 12.03.2008. The disciplinary authority on receipt of inquiring officer's report proceeded to issue show cause notice seeking 1st Respondent explanation on the inquiring officer's report on 18.03.2008. The 1st respondent had submitted his reply to the show cause notice read with the inquiring officer's report. Thereafter, disciplinary authority proceeded to pass order of dismissal on 04.12.2008.

3. If the 1st respondent was in service in that event he would have attained the age of superannuation and retired from service on 02.01.2010. In this backdrop, 1st Respondent filed



CWJC No. 11458 of 2019 in seeking payment of entire retirement benefits as if he has attained age of superannuation and retired from service on 02.01.2010 from the post of Assistant Godown Manager from Rohtas, Sasaram, Bihar State Food Supplies Corporation. During pendency of CWJC No. 11458 of 2019, in the year 2021, this Court stated to have noticed that 1st respondent-Dhannu Prasad Singh was dismissed employee/officer and he is not entitled to seek retirement benefits. In other words, dismissed employee is not entitled to have the benefit of retiral benefits. Therefore, writ court proceeded to permit the respondent to question the validity of dismissal order dated 04.12.2008 in the year, 2021. Thus, learned Single Judge proceeded to pass orders on merit and allowed the petition.

4. Feeling aggrieved and dissatisfied with the order of the learned Single Judge dated 12.07.2021 passed in CWJC No. 11458 of 2019 appellants-Corporation presented this Letters Patent Appeal.

5. Learned counsel for the appellants vehemently contended that writ Court should have rejected CWJC No. 11458 of 2019 at threshold on the ground that dismissed employee is not entitled to have the benefit of retirement. It is also submitted that writ Court should not have permitted the 1st respondent-Dhannu Prasad



Singh in questioning the validity of dismissal order belatedly. It is also submitted that there is no pleadings in respect of delay and laches insofar as questioning the validity of dismissal order dated 04.12.2008 in the year, 2021. It is further submitted that writ Court proceeded to ignore the delay as if the grievance of the petitioner is only in respect of monetary benefits so as to curtail monetary benefits for a particular period like in the present case monetary benefits is stated to have been restricted to three years prior to the date of filing writ petition. Hence, the order of learned Single Judge dated 12.07.2021 passed in CWJC No. 11458 of 2019 is liable to be set aside while dismissing CWJC No. 11458 of 2019.

6. *Per contra*, learned counsel for the 1st respondent resisted the aforementioned contentions and submitted that it is admitted fact that 1st respondent-Dhannu Prasad Singh was subjected to parallel proceedings. Departmental proceedings have been concluded on 04.12.2008 in imposing penalty of dismissal from service. However, it was not communicated to the 1st respondent-Dhannu Prasad Singh and it was made known only during pendency of CWJC No. 11458 of 2019. Thus, there is a delay in questioning the validity of dismissal order dated 04.12.2018 passed in CWJC No. 11458 of 2019. There is no error committed by the learned Single Judge while allowing the writ petition on merits. In



this regard, he has pointed out page no. 9 of the learned Single Judge order dated 12.07.2021 to the extent that learned Single Judge has taken note of two decisions of the Hon'ble Apex Court in the case of **Union of India and Ors. vs. Tarsen Singh** reported in **(2008) 8 SCC 648** and **Union of India and Ors. vs. H.C. Goel** reported in **AIR 1964 SC 364**. Therefore, there is no infirmity in the order of the learned Single Judge. Hence, the present Letters Patent Appeal is liable to be dismissed while affirming the order of the learned Single Judge dated 12.07.2021 passed in CWJC No. 11458 of 2019.

7. Heard learned counsels for the respective parties.

8. Undisputed facts are that 1st respondent- Dhannu Prasad Singh was subjected to disciplinary and criminal proceedings. Disciplinary proceedings was concluded in imposition of penalty of dismissal of 1st respondent-Dhannu Prasad Singh on 04.12.2008 whereas in the criminal proceedings he was acquitted on 06.05.2019. 1st Respondent- Dhannu Prasad Singh was under the impression that he would have retired in the normal course on 02.01.2010 as if there is no order of dismissal from service. He has approached this Court in respect of retiral benefits in the year, 2019 to the extent that he would have got retiral benefits only after criminal proceedings are concluded.



9. Be that as it may, the 1st respondent- Dhannu Prasad Singh has not apprised this Court whether has he discharged the duties of the post held by him during the intervening period from 04.12.2008 to 02.01.2010 and assuming that he was placed under suspension from 28.07.2004. Was he placed under suspension till 02.01.2010, the date on which in the normal course he was to retire so as to come to the conclusion that order of dismissal dated 04.12.2008 has not been communicated to the respondent-Dhannu Prasad Singh and further if he was placed under suspension in that event upto what date subsistence allowance was paid, if it was paid the same should have been discontinued from the date of dismissal from service, i.e, 04.12.2008. 1st Respondent being an officer, he cannot contend that he was not aware of dismissal order dated 04.12.2008 for about one decade and few months. In this regard, no material has been placed on record. Further, perusal of writ pleadings including interlocutory application insofar as challenge to the dismissal order there were no material in respect of delay and laches. Further, there is no explanation or submission from the year, 2010 till 2021 as to why he was not aware of dismissal order. One can draw inference that dismissal order was not communicated to him and at the same time he was getting certain monetary benefits from the appellants-Corporation like subsistence al-



lowance. When he is aware of the fact that he was not extended subsistence allowance during the intervening period of suspension dated 28.07.2004 and dismissal order dated 04.12.2008, he has slept over the matter or knowingly kept silent. The learned Single Judge has not taken note of the aforementioned material information. Further, learned Single Judge has committed error to the extent that respondent had continuing cause of action in respect of dismissal order is concerned, question of continuing cause of action is not warranted. In other words, it has attained finality and no monetary benefits to be paid to the 1st respondent-Dhannu Prasad Singh on the basis of the cited decision **Tarsem Singh** (supra) and it is in respect of release of monetary benefits of employee if he has approached the judicial forum belatedly. In other words, continuing cause of action would arise in such of those cases, for example if an employee has been placed under suspension for years together if he is not paid subsistence allowance in that event continuing cause of action would arise to the extent that on every month he is entitled to subsistence allowance. Similarly, in case of retired employee, if pension is denied for about few months in that event he is entitled to have the benefit of pension since it would be continuing cause of action to the extent that every month he is entitled to pension. Such principle is not attracted in respect of dis-



missal order. Undisputedly, order of dismissal is dated 04.12.2008 and it was questioned in a pending writ petition in the year, 2021 namely in CWJC No. 11458 of 2019 in which initially retiral benefits have been sought by the 1st respondent-Dhannu Prasad Singh. Hon'ble Supreme Court in the case of **State of Jammu and Kashmir Vs. R.K. Zalpuri and others** reported in **AIR 2016 Supreme Court 3006** held as under:-

“20. Having stated thus, it is useful to refer to a passage from City and Industrial Development Corporation v. Dosu Aardeshir Bhiwandiwalla and Others, wherein this Court while dwelling upon jurisdiction under Article 226 of the Constitution, has expressed thus:-

“The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:

(a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;

(b) the petition reveals all material facts;

(c) the petitioner has any alternative or effective remedy for the resolution of the dispute;

(d) person invoking the jurisdiction is guilty of unexplained delay and laches;



(e) ex facie barred by any laws of limitation;

(f) grant of relief is against public policy or barred by any valid law; and host of other factors.”

(Emphasis supplied)

10. One of the principle laid down by the Hon’ble Apex Court to entertain writ petition, the writ Court is required to examine delay and laches. In other words, in the present case insofar as challenge to the dismissal order dated 04.12.2008 was in the year, 2021 by 1st the respondent- Dhannu Prasad Singh there is a delay and laches and it has not been explained so as to consider the same. The learned Single Judge has not explained delay and laches for more than a decade in respect of challenge to dismissal order dated 04.12.2008 and questioning in the year 2021.

11. In view of these facts and circumstances, the learned Single Judge has committed error in allowing CWJC No. 11458 of 2019 decided on 12.07.2021. Accordingly, the appellants-Corporation have made out a case so as to interfere with the order of the learned Single Judge dated 12.07.2021 passed in CWJC No. 11458 of 2021 and it is set aside while dismissing CWJC No. 11458 of 2019. Accordingly, the Present Letters Patent Appeal No. 488 of



2021 stands allowed. Pending interlocutory applications, if any,
stands disposed of.

(P. B. Bajanthri, J)

(Ramesh Chand Malviya, J)

Vikash/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	
Transmission Date	N/A

